LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7006 | **NOTE PREPARED:** Jan 7, 2006
BILL NUMBER: HB 1397 | **BILL AMENDED:**

SUBJECT: State Ethics Standards.

FIRST AUTHOR: Rep. Whetstone | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State
DEDICATED
FEDERAL

Summary of Legislation: *Business Relationship:* The bill changes the definition of "business relationship" in the executive branch ethics statute to include the relationship an executive branch lobbyist has with an executive branch agency.

State Ethics Commission: The bill gives the State Ethics Commission certain jurisdiction over executive branch lobbyists. It provides that the Inspector General may seek an advisory opinion from the Commission. It changes the evidentiary standard applicable to Commission findings from "competent and substantial" to "a preponderance of the evidence". The bill shifts certain responsibilities from the Commission to the Inspector General. The bill also authorizes a member of the Commission to participate in Commission meetings from a remote location under certain circumstances.

It authorizes the Commission to require revocation of licenses, permits, or registrations issued by an agency for violations of the ethics statutes or rules.

Financial Disclosure Statements: The bill requires certain persons who have final purchasing authority for an agency to file an annual financial disclosure statement.

Department of Administration: The bill requires registration of executive branch lobbyists with the Department of Administration. It authorizes the Department of Administration to adopt rules to establish registration fees and to impose civil penalties and revoke registrations if an executive branch lobbyist violates the registration requirements. It also imposes initial registration fees.

Technical Changes and Repeal: The bill makes other technical changes. It repeals the current statute authorizing registration of executive branch lobbyists.

Effective Date: July 1, 2006.

Explanation of State Expenditures: *Summary* - This bill could increase administrative costs for registering and regulating executive branch lobbyists. The increased administrative costs could be offset by registration fees or civil penalties that the Department of Administration (IDOA) will collect. However, the relationship between the new fees and penalties and the administrative costs is indeterminate because the number of people to be registered is yet unknown. The bill adds to the people protected by a provision with a penalty of a Class A misdemeanor, which could result in additional fine revenue for the Common School Fund or additional incarceration costs for local units of government. The bill also adds certain groups to the jurisdiction of the State Ethics Commission, the Inspector General (IG) statute, and the IDOA, which could increase administrative expenses for these agencies. The bill makes administrative changes that appear to have minimal fiscal impact or no change in administrative costs.

Department of Administration: The bill requires an executive branch lobbyist to file a registration statement and annual report with IDOA. The IDOA collects a registration fee of $50 for nonprofit organizations and $100 for other organizations. These registration fee amounts expire when the IDOA, in consultation with the IG and the Commission, adopts rules that set registration fees. Also, the bill allows the IDOA to charge late fees for late filing of a registration statement or an annual report.

If there is a material error in a registration statement or annual report and no correction is made, or if an executive branch lobbyist fails to file a registration statement or annual report, the IDOA may revoke the registration and/or assess a civil penalty of up to $500 through its adjudicative proceedings under IC 4-21.5-3.

Department of Administration Background: IDOA has adopted rules in December 2005 concerning the registration of executive branch lobbyists. The rules include a requirement that within 15 business days of making any contact with an agency regarding an executive branch action, an executive branch lobbyist shall file with the Department and that, beginning in 2007, the lobbyist will file an annual report. IDOA currently provides an online registration form. The registration program has not been in existence long enough to have data concerning the number of registrations.

The bill also repeals requirements that the IDOA adopt rules concerning registration as an executive branch lobbyist.

State Ethics Commission: Provisions with Increased Administrative Costs - The bill could increase administrative costs by adding certain groups to the jurisdiction of the Commission or by adding certain groups to prohibited acts. The bill includes the relationship of an executive branch lobbyist with a state agency in the definition of a business relationship. The definition applies to the chapters of the Indiana Code concerning ethics and conflicts of interest and IG duties. As a result, executive branch lobbyists would be under the jurisdiction of the Commission. The number of executive branch lobbyists is currently unknown, but expected to be large.

Also, the bill adds former state special appointees to those who cannot accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. It also adds special state appointees to a prohibition against receiving compensation in certain situations. If additional actions are required by the Commission as a result of these additions, administrative costs for enforcement could increase.

Provisions with Minimal Fiscal Impact - The bill also has certain provisions that are expected to have minimal fiscal impact on the administrative costs of the Commission. First, the bill allows members of the Commission to attend a Commission meeting from a remote location by using a communications device that permits the member, all other Commission members, and members of the public to communicate simultaneously with each other during the meeting. This restriction does not appear to require specialized equipment other than a clear speaker phone.

Second, current law requires the Commission to provide its finding of fact to the respondent, the appointing authority or state officer of the employee, and the governor. The bill would add to the distribution list the appointing authority or state officer of an agency or office that has a business relationship with a sanctioned person. The Commission could incur additional cost for the additional distribution.

Third, under current law, the Commission has several options for disposing of a complaint filed with the Commission. When the Commission does not act, the Commission must promptly refer the matter to the IG for further investigation and convene a public hearing within 60 days. Under the bill, the Commission would have to set a public meeting, and the time requirement is removed.

Provisions with No Expected Fiscal Impact - The bill has provisions that appear to have no fiscal impact on the Commission's administrative costs. Under current law, the Commission has responsibilities for financial filings, including prescribing and providing forms for required statements, inspecting financial disclosure forms, notifying persons who fail to file, developing filing, coding, and indexing systems as required, and preparing interpretive and educational materials and programs. Under the bill, these responsibilities are transferred to the IG. Also the requirement to adopt rules concerning filing a financial disclosure statement transfer from the Commission to the IG. As a result, the administrative costs that would have been incurred by the Commission will instead be incurred by the IG.

The bill would add to the actions that may be taken by the Commission for violation of IC 4-2-6, IC 4-2-7, or a rule adopted under these chapters. The additional sanctions include revoking a license or permit issued by an agency, barring a person from obtaining a license or permit, revoking a person's registration as an executive branch lobbyist, or bar a person from future lobbying activity with a state officer or agency.

State Ethics Commission Background: The Office of the Inspector General provides rooms and staff assistance for the Commission. Prior to last year, the Commission received a separate appropriation and, between FY 2001 and FY 2004, had average annual expenditures of $243,810. In FY 2005, expenses for the Commission were $248,442.

Inspector General: With the responsibilities the IG would receive from the Commission concerning financial filings, the bill could increase administrative costs for the IG by adding any agency employee, special state appointees, former agency employees, or former special state appointees with final purchasing authority to the people who file a written financial disclosure statement. The number of additional filings is unknown.

The IG could also incur additional administrative expenses because the bill expands the rule making authority of the Inspector General from adopting rules to implement a code of ethics to implementing the chapter concerning ethics and conflicts of interest and the IG statute.

Background on the Inspector General: The Office of the Inspector General operated for three months in FY 2005, with expenses of $204,206, excluding State Ethics Commission costs. For the FY 2006 and FY 2007 biennium, the appropriations for the Office of the Inspector General are $1.7 M per year.

Explanation of State Revenues: *Retaliation:* Under current law, it is a Class A misdemeanor to knowingly or intentionally retaliate against an employee for filing a complaint, providing information to the Commission or IG, or testifying at a Commission proceeding. There are no data to indicate if more people would be convicted of this crime if special state appointees and former special state appointees are added to the protected individuals. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is $5,000. However, any additional revenue would likely be small.

Explanation of Local Expenditures: *Retaliation:* A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Retaliation:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Department of Administration; the State Ethics Commission; the Inspector General.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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